

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(254)

CRM-M-42414-2021
DATE OF DECISION:-03.05.2023

Balwinder Singh Sidhu

...Petitioner

vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Akshay Jain, Advocate, for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

HARKESH MANUJA, J.

(1) By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of FIR No.46 dated 03.08.2013 (Annexure P-3) registered at Police Station City Raikot, Police District Ludhiana (Rural) under Section 406/420 IPC alongwith all other consequential proceedings arising therefrom qua the petitioner.

(2) Petitioner being one of the Directors of M/s Raekot Agro Foods Pvt. Ltd., Ludhiana, (hereinafter referred to as "the Company") was arrayed as one of the accuseds besides his brother namely Sukhwinder Singh, with the allegations that under an agreement with the Punjab State Warehousing Corporation, the company was supplied paddy for the purpose of milling, however, at the time of its return, the complete quantity was not handed over to the Warehousing Corporation thereby causing a loss of Rs.57,96,220/- due to defalcation of 3538.311 quintals paddy stocks.

(3) Learned counsel for the petitioner submits that though, the petitioner happens to be one of the Directors of the company, however, even as per the allegations levelled in the FIR, the agreement regarding supply of

paddy by the corporation to the Company was executed by his brother Sukhwinder Singh being the Director and the authorized person. He further submits that in the entire complaint, not even a single averment was there to the effect that the petitioner was in any manner, being incharge and responsible for the day-to-day functioning of the company. Learned counsel also points out that the agreement in question was executed on 02.11.2012 whereas on the said date, petitioner had already left for United State of America (USA) for his permanent abode and thus, he was not involved in any such transaction as alleged in the FIR.

(4) On the other hand, learned State counsel vehemently opposes the prayer made in the present petition while submitting that the petitioner is admittedly one of the Directors of the company which apparently caused financial loss to the Corporation and thus liable to be prosecuted and it would be pre-mature to adjudicate upon the veracity of the allegations levelled in the FIR at this stage.

(5) I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

(6) A perusal of the FIR clearly shows that the agreement was executed between Sukhwinder Singh being Director of the Company and the Corporation. Not even a single averment has been made in the entire FIR about the petitioner being incharge and responsible for the day to day functioning of the company or even he having played an active role in the transaction of receipt of paddy by the company from the corporation or its return. In the absence of the fact that the company as such has not even been arrayed as one of the accused, the petitioner could not have been indicted in the FIR by holding him vicariously liable for the fault, if any

committed by the company, especially in the absence of any such specific provision, either in the Code of Criminal Procedure or in the Indian Penal Code. Reference in this regard can be made to the case titled as **Sushil Sethi and another Vs. State of Arunachal Pradesh and others**, reported as **(2020) 3 Supreme Court Cases 240** and para No.8.2 of being relevant is reproduced hereunder:

“8.2. It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In the case of Maksud Saiyed v. State of Gujarat (2008) 5 SCC 668, it is observed and held by this Court that the penal code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the company when the accused is the company. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further observed that statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside.”

The aforesaid view has even been reiterated by the Hon’ble Supreme Court in case of “**Ravindranatha Bajpe Vs. Mangalore Special**

Economic Zone Ltd. & Others Etc.” reported as 2021 (3) Apex Court Judgment, 52.

(7) More than that, the agreement in question was executed on 02.11.2012 whereas from the un-rebutted documents appended along with the paper book, in the shape of copy of passport of the petitioner, it can be seen that the petitioner left for USA as his permanent abode on 17.10.2012 i.e. prior to the date of execution of the agreement between the Company and the Corporation and thus, he was apparently not involved in any such transaction as relied upon by the Corporation while registering the FIR against the petitioner.

(8) In view of the discussion made hereinabove, no offence is made out against the petitioner. Accordingly, petition is allowed and FIR No.46 dated 03.08.2023 (Annexure P-3) registered at Police Station City Raikot, Police District Ludhiana (Rural) under Section 406/420 IPC along with all the consequential proceedings arising therefrom qua the petitioner is hereby quashed.

03.05.2023
anil

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No